

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael H. Capon, et al.
Serial No.: 09/741,115
Filing Date: December 19, 2000
Title: METHOD AND APPARATUS FOR
PROVIDING VARIABLE ATTENUATION
TO DATA SIGNALS IN AN XDSL
FREQUENCY RANGE

Honorable Assistant Commissioner
of Patents
Washington, D.C. 20231

Dear Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service as express mail number EL 759176868 US in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Willie Giles

April 11, 2001
Date

PETITION TO MAKE APPLICATION
FOR PATENT UNDER 37 C.F.R. § 1.47(a)

Barton E. Showalter, on behalf of Cisco Technology, Inc. ("Cisco"), owner of the above-identified patent application (the "Application"), hereby petitions to make application for patent on behalf of joint inventor, Michael H. Capon, under 37 C.F.R. § 1.47(a), and hereby respectfully submits the following:

1. On December 19, 2000, Cisco filed a non-provisional patent application entitled **METHOD AND APPARATUS FOR PROVIDING VARIABLE ATTENUATION TO DATA SIGNALS IN AN XDSL FREQUENCY RANGE** with the United States Patent and Trademark Office, which was assigned Application Serial No. 09/741,115.

2. The named joint inventors are Robert A. Marshall and Michael H. Capon. Michael H. Capon refused to join in the Application.

3. Proof of the pertinent facts is set forth in the Declaration of Barton E. Showalter, submitted with this Petition.

4. Documentary evidence recited in the Declaration of Barton E. Showalter is also attached.

5. The statements in the Declaration of Barton E. Showalter, made with first hand knowledge of the facts, and the attached documentary evidence, are self-explanatory and are submitted as proof of the difficulty to join inventor Michael H. Capon.

6. The last known address and phone number for Michael H. Capon is:

16601 FM 1325 #636
Austin, TX 78728
(512) 671-7682

7. A copy of the Declaration and Power of Attorney executed by joint inventor, Robert A. Marshall, on behalf of himself and joint inventor Michael H. Capon pursuant to 37 C.F.R. § 1.64(b) is also submitted as Exhibit C of the Declaration. The original Declaration and Power of Attorney was submitted with the application filing on December 19, 2000.

8. Please find enclosed a check in the amount of \$130.00 as provided by 37 C.F.R. § 1.17(i). The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to the Deposit Account No. 02-0384 of Baker Botts L.L.P.

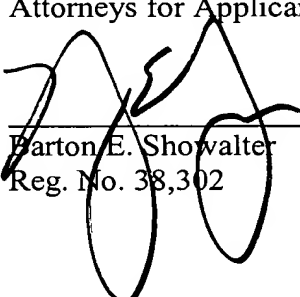
It is respectfully requested that this Petition be granted.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

Date:

April 11, 2001


Barton E. Showalter
Reg. No. 38,302

ATTORNEY DOCKET
062891.0439

PATENT
09/741,115

1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Utility Application of:

Michael H. Capon, et al.

Serial No.:

09/741,115

Filing Date:

December 19, 2000

Title:

METHOD AND APPARATUS FOR
PROVIDING VARIABLE ATTENUATION
TO DATA SIGNALS IN AN XDSL
FREQUENCY RANGE

Honorable Assistant Commissioner
of Patents
Washington, D.C. 20231

Dear Sir:

DECLARATION OF FACTS PURSUANT TO 37 C.F.R. § 1.47(a)

I am a patent attorney handling this non-provisional utility patent application for Cisco Technology, Inc. ("Cisco"). Cisco is the assignee of the application as evidenced by (i) an Assignment executed by joint inventor Robert A. Marshall on December 7, 2000 (Exhibit A) and (ii) a Proprietary Information and Invention Agreement executed by inventor Michael H. Capon on November 10, 1998 (Exhibit B). The Assignment executed by Robert A. Marshall and the Proprietary Information and Invention Agreement executed by Michael H. Capon are being filed with the U.S. Patent and Trademark Office assignment records simultaneously with this Declaration.

Cisco filed this application without a fully executed Declaration as required by 37 C.F.R. § 1.68 because inventor Michael H. Capon refused to execute the required Declaration. A copy of the Declaration and Power of Attorney as filed with the utility application on December 19, 2000 is attached hereto as Exhibit C. This Declaration accompanies the concurrently filed "Petition to Make Application for Patent Under 37 C.F.R. § 1.47(a)" as supporting evidentiary documents.

The facts are as follows:

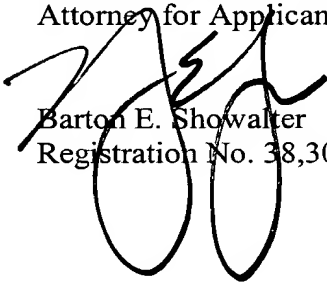
1. Mr. Capon is under an obligation to assign the invention described in the application to Cisco pursuant to the Proprietary Information and Invention Agreement (Exhibit B). Under this Agreement, Cisco hired Mr. Capon to develop the invention described in the utility application, and Mr. Capon agreed to assign any and all inventions developed to Cisco. Mr. Capon developed the invention while employed by Cisco.
2. On December 13, 2000, I sent a transmittal letter (Exhibit D), final draft of the utility patent application and drawings, Declaration and Power of Attorney, and an Assignment to Mr. Capon, via Certified Mail (Z434825627) to the address of 16601 FM 1325 #636, Austin, Texas 78728.
3. On December 15, 2000, Mr. Capon was contacted via telephone at his home number and verified that the address of 16601 FM 1325 #636, Austin, Texas 78728 was his correct address. At this time, Mr. Capon expressly refused to sign any documents unless he received a written confirmation from Cisco that he would be paid for his invention.
4. On December 19, 2000, Cisco filed this application for joint inventors, Michael H. Capon and Robert A. Marshall, entitled *Method and Apparatus for Providing Variable Attenuation to Data Signals in an XDSL Frequency Range*, which was assigned U.S. Serial No. 09/741,115.
5. On January 19, 2001, I received the package sent to Mr. Capon on December 13, 2000, stamped "Return to Sender – Unclaimed" by the U.S. Postal Service. A copy of the envelope addressed to Mr. Capon indicating the package was unclaimed is attached to this Declaration as Exhibit E.

I hereby declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under § 1001 of Title 18 of the United

States Code, and that such willful false statement may jeopardize the validity of the patent issuing from the instant application.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorney for Applicants


Barton E. Showalter
Registration No. 38,302

Date: April 11, 2001

CORRESPONDENCE ADDRESS:

Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, TX 75201-2980
(214.953.6509)

Attachments:

- Exhibit A: A copy of the Assignment executed by Robert A. Marshall on December 7, 2000;
- Exhibit B: A copy of the Proprietary Information and Invention Agreement executed by Michael H. Capon on November 10, 1998;
- Exhibit C: A copy of the Declaration and Power of Attorney executed by Robert A. Marshall on December 7, 2000;
- Exhibit D: A copy of a letter sent to Michael H. Capon via certified mail, return receipt requested on December 13, 2000; and
- Exhibit E: A copy of the envelope addressed to Michael H. Capon indicating the package as "Unclaimed."

ASSIGNMENT

WHEREAS, I, the undersigned inventor (or one of the undersigned joint inventors), of residence as listed, having invented certain new and useful improvements as below entitled, for which application for United States Letters Patent is made, said application having been executed on the date set forth below; and

WHEREAS, Cisco Technology, Inc. (hereinafter referred to as "Assignee"), a California Corporation, with an address of 170 West Tasman Drive, San Jose, California 95134, desires to acquire my entire right, title and interest in and to the invention, and in and to the said application and any Letters Patent that may issue thereon;

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we assign to Assignee, all right, title and interest in and to said invention and in and to said application and all patents which may be granted therefor, and all divisions, reissues, continuations, continuations-in-part and extensions thereof; and we hereby authorize and request the Commissioner of Patents and Trademarks to issue all patents for said invention, or patents resulting therefrom, insofar as our interest is concerned, to Assignee.

We also assign to Assignee, all right, title and interest to the invention disclosed in said application throughout the world, including the right to file applications and obtain patents, utility models, industrial models and designs for said invention in its own name throughout the world including all rights to publish cautionary notices reserving ownership of said invention and all rights to register said invention in appropriate registries; and we further agree to execute any and all powers of attorney, applications, assignments, declarations, affidavits, and any other papers in connection therewith necessary to perfect such right, title and interest in Assignee.

We will communicate to Assignee any facts known to us respecting any improvements; and, at the expense of Assignee, we will testify in any legal proceedings, sign all lawful papers, execute all divisional, continuation, continuation-in-part, reissue and substitute applications, make lawful oaths and declarations, and generally do everything possible to vest title in Assignee and to aid Assignee to obtain and enforce proper protection for said invention in all countries.

This Assignment shall be binding on the parties' successors, assigns and legal representatives.

ATTORNEY DOCKET NO.
062891.0439

ASSIGNMENT

2

Title of Invention:

METHOD AND APPARATUS FOR
PROVIDING VARIABLE ATTENUATION
TO DATA SIGNALS IN AN XDSDL
FREQUENCY RANGE

Signature of Inventor:

Inventor's Name:

Michael H. Capon

Residence (City, County, State)

Austin, Travis County, Texas

Date:

Date Application Executed:

ATTORNEY DOCKET NO.
062891.0439

ASSIGNMENT

3

Signature of Inventor:
Inventor's Name:

Robert A. Marshall
Robert A. Marshall

Residence (City, County, State)

Georgetown, Williamson County, Texas

Date:

12-7-00

Date Application Executed:

12-7-00

PROPRIETARY INFORMATION AND INVENTION AGREEMENT

The following confirms certain terms of my employment with Cisco Systems, (hereafter referred to as "the Company"), which is a material part of the consideration for my employment by the Company:

1. As used in this Agreement, "Cisco Systems" and "Company" refer to Cisco Systems, Inc. and each of its subsidiaries. I recognize and agree that my obligations under this Agreement and all terms of this Agreement apply to me regardless of whether I am employed by or work for Cisco Systems, Inc.; Cisco Technology, Inc.; Cisco Systems Sales & Services, Inc.; or any other subsidiary or affiliated company of Cisco Systems, Inc. Furthermore, I understand and agree that the terms of this Agreement will continue to apply to me even if I transfer at some time from one subsidiary or affiliate of the Company to another.
2. I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business. "Proprietary Information" includes, but is not limited to, software programs and subroutines, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of Company employees, and other information concerning the Company's actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person. I understand that my employment creates a relationship of confidence and trust between me and the Company with respect to Proprietary Information.
3. I understand that the Company possesses or will possess "Company Documents and Materials" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others. "Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, sample products, prototypes and models.
4. In consideration of my employment by the Company and the compensation received by me from the Company from time to time, I hereby agree as follows:
 - a. All Proprietary Information and all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connection therewith shall be the sole property of the Company. I

hereby assign to the Company any and all rights, title and interest I may have or acquire in such Proprietary Information. At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company, except as may be necessary in the ordinary course of performing my duties to the Company.

b. I agree to make and maintain adequate and current written records, in a form specified by the Company, of all inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement. All Company Documents and Materials shall be the sole property of the Company. I agree that during my employment by the Company, I will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or during my employment if so requested by the Company, I will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation; (ii) my personal copies of any materials previously distributed generally to stockholders of the Company; and (iii) my copy of this Agreement.

c. I will promptly disclose in writing to my immediate supervisor, or to such other person designated by the Company, all "Inventions," which includes, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, ideas, processes, techniques, know-how and data, whether or not patentable, made or discovered or conceived or reduced to practice or developed by me, either alone or jointly with others, during the term of my employment. I will also disclose to the President of the Company all Inventions made, discovered, conceived, reduced to practice, or developed by me within six (6) months after the termination of my employment with the Company which resulted, in whole or in part, from my prior employment by the Company. Such disclosures shall be received by the Company in confidence (to the extent such Inventions are not assigned to the Company pursuant to subsection (d) below) and do not extend the assignment made in subsection (d) below.

d. I agree that all Inventions which I make, discover, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company to the maximum extent permitted by Section 2870 of the California Labor Code or any like statute of any other state. Section 2870 provides as follows:

- a. Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without

using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
 - (2) Result from any work performed by the employee for his employer.
- b. To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

This assignment shall not extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870.

e. The Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions that are the sole property of the Company. I further acknowledge and agree that such Inventions, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a prior Invention owned by me or in which I have interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product, process or machine.

f. I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements thereto in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorney-in-fact to act for and on my behalf and instead of me, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this subsection (f), including, without limitation, the perfection of assignment and the prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and

registrations or other rights in connection with such Inventions and improvements thereto with the same legal force and effect as if executed by me.

g. Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent.

h. I have attached hereto as Exhibit A a complete list of all Inventions or improvements to which I claim ownership and that I desire to remove from the operation of this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions and improvements at the time of signing this Agreement.

i. During the term of my employment and for one (1) year thereafter, I will not encourage or solicit any employee of the Company to leave the Company for any reason or to accept employment with any other company. As part of this restriction, I will not interview or provide any input to any third party regarding any such person during the period in question. However, this obligation shall not affect any responsibility I may have as an employee of the Company with respect to the bona fide hiring and firing of Company personnel.

j. Prior to my submitting or disclosing for possible publication or dissemination outside the Company any material prepared by me that incorporates information that concerns the Company's business or anticipated research, I agree to deliver a copy of such material to an officer of the Company for his or her review. Within twenty (20) days following such submission, the Company agrees to notify me in writing whether the Company believes such material contains any Proprietary Information or Inventions, and I agree to make such deletions and revisions as are reasonably requested by the Company to protect its Proprietary Information and Inventions. I further agree to obtain the written consent of the Company prior to any review of such material by persons outside the Company.

k. I agree that, during my employment with the Company, I will not provide consulting services to or become an employee of, any other firm or person engaged in a business in any way competitive with the Company, or involved in the design, development, marketing, sale or distribution of any networking or software products, without first informing the Company of the existence of such proposed relationship and obtaining the prior written consent of my manager and the Human Resource Manager responsible for the organization in which I work.

l. I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment by the Company, and I will not disclose to the Company, or induce the

Company to use, any confidential or proprietary information or material belonging to any previous employers or others. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company. I further agree to conform to the rules and regulations of the Company.

5. I agree that I am employed on an "at-will" basis. This means that I have the right to resign and the Company has the right to terminate my employment at any time for any reason, with or without cause. This is the complete agreement between the Company and me on this term of my employment. I further agree that this term can only be modified by the Company President and he or she can only do so in a writing signed and dated by him or her and me.
6. I agree that any and all disputes that I have with the Company, or any of its employees, which arise out of my employment or under the terms of my employment, shall be resolved through final and binding arbitration, as specified herein. This shall include, without limitation, disputes relating to this Agreement, my employment by the Company or the termination thereof, claims for breach of contract or breach of the covenant of good faith and fair dealing, and any claims of discrimination or other claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Employee Retirement Income Securities Act, the Racketeer Influenced and Corrupt Organizations Act, or any other federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of my employment with the Company or its termination. The only disputes not covered by this Agreement are the following: (i) claims for benefits under the unemployment insurance or workers' compensation laws, and (ii) claims concerning the validity, infringement or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property held or sought by the Company or which the Company could otherwise seek; in each of these instances such disputes or claims shall not be subject to arbitration, but rather, will be resolved pursuant to applicable law. Binding arbitration will be conducted in Santa Clara County, California in accordance with the rules and regulations of the American Arbitration Association (AAA). If, at the time the dispute in question arose, I lived and worked more than one hundred (100) miles from Santa Clara County, California, then I have the option of requesting that the arbitration take place in the county in which Cisco has an office that is nearest to my residence at the time the dispute in question arose. Each party will split the cost of the arbitration filing and hearing fees, and the cost of the arbitrator; each side will bear its own attorneys' fees; that is, the arbitrator will not have authority to award attorneys' fees unless a statutory section at issue in the dispute authorizes the award of attorneys' fees to the prevailing party, in which case the arbitrator has authority to make such award as permitted by the statute in question. I understand and agree that the arbitration shall be instead of any jury trial and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.
7. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be

enforceable in accordance with its terms.

8. I hereby authorize the Company to notify my new employer about my rights and obligations under this Agreement following the termination of my employment with the Company.
9. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us, including but not limited to any and all statements made by any officer, employee or representative of the Company regarding the Company's financial condition or future prospects. I understand and acknowledge that, except as set forth in this Agreement and in the offer letter from the Company to me (i) no other representation or inducement has been made to me, (ii) I have relied on my own judgment and investigation in accepting my employment with the Company, and (iii) I have not relied on any representation or inducement made by any officer, employee or representative of the Company. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the President of the Company and me. I understand and agree that any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.
10. This Agreement shall be effective as of the first day of my employment with the Company and shall be binding upon me, my heirs, executor, assigns, and administrators, and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.
11. Although I may work for Cisco outside of California or the United States, I understand and agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY.

MICHAEL H. CAPON

Employee Name (Please Print)

Michael H. Capon

Employee Signature

11/10/1998

Date

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name, that I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention, design or discovery entitled METHOD AND APPARATUS FOR PROVIDING VARIABLE ATTENUATION TO DATA SIGNALS IN AN XDSL FREQUENCY RANGE, the specification of which is attached hereto;

That I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above; that I do not know and do not believe that said invention, design or discovery was ever known or used in the United States of America before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention, design or discovery has not been patented or made the subject of an inventor's certificate issued prior to the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns; and that I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in 37 C.F.R. § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application(s) for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Number	Country	Date Filed	Priority Claimed (Yes) (No)
-----NONE-----			

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not

disclosed in the prior United States application(s) in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in 37 C.F.R. § 1.56 which became available between the filing date of the prior application(s) and the national or PCT international filing date of this application:

<u>Application Serial Number</u>	<u>Date Filed</u>	<u>Status</u>
-----NONE-----		

I hereby appoint:

Jerry W. Mills	Reg. No. 23,005
Robert M. Chiaviello, Jr.	Reg. No. 32,461
Samir A. Bhavsar	Reg. No. 41,617
James L. Baudino	Reg. No. 43,486
Jeffery D. Baxter	Reg. No. 45,560
Thomas A. Beaton	Reg. No. 46,543
William R. Borchers	Reg. No. 44,549
David M. Doyle	Reg. No. 43,596
Thomas R. Felger	Reg. No. 28,842
Thomas J. Frame	Reg. No. 47,232
Charles S. Fish	Reg. No. 35,870
Robert W. Holland	Reg. No. 40,020
Keiko Ichiye	Reg. No. 45,460
Jay B. Johnson	Reg. No. 38,193
Christopher W. Kennerly	Reg. No. 40,675
Tara D. Knapp	Reg. No. 43,723
Douglas M. Kubehl	Reg. No. 41,915
Ann C. Livingston	Reg. No. 32,479
Kevin J. Meek	Reg. No. 33,738
Harold E. Meier	Reg. No. 22,428
Brian W. Oaks	Reg. No. 44,981
Kurt M. Pankratz	Reg. No. 46,977
Luke K. Pedersen	Reg. No. 45,003
Barton E. Showalter	Reg. No. 38,302
T. Murray Smith	Reg. No. 30,222
Terry J. Stalford	Reg. No. 39,522
Brian E. Szymczak	Reg. No. 47,120
Matthew B. Talpis	Reg. No. 45,152
David G. Wille	Reg. No. 38,363
Bradley P. Williams	Reg. No. 40,227
Scott F. Partridge	Reg. No. 28,142

James B. Arpin	Reg. No. 33,470
Roger J. Fulghum	Reg. No. 39,678
Thomas R. Nesbitt, Jr.	Reg. No. 22,075
James J. Maune	Reg. No. 26,946
Patent Agents:	
Brian A. Dietzel	Reg. No. 44,656
Kevin R. Imes	Reg. No. 44,795

all of the firm of Baker Botts L.L.P., my attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the United States Patent and Trademark Office connected therewith, and to file and prosecute any international patent applications filed thereon before any international authorities.

Send Correspondence To:

Baker Botts L.L.P.
2001 Ross Avenue
Dallas, Texas 75201-2980

Direct Telephone Calls To:

Barton E. Showalter
at 214.953.6509
Atty. Docket No. 062891.0439

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Full name of the sole or first inventor:

Michael H. Capon

Inventor's signature

Date

Residence (City, County, State)

Austin, Travis County, Texas

Citizenship

United States of America

Post Office Address

16601 FM 1325 #636
Austin, Texas 78728

Full name of second inventor:

Robert A. Marshall

Inventor's signature

Robert A. Marshall

Date

12-7-00

Residence (City, County, State)

Georgetown, Williamson County, Texas

Citizenship

United States of America

Post Office Address

324 Doe Run
Georgetown, Texas 78628

December 13, 2000

Barton E. Showalter
(214) 953-6509
bart_showalter@bakerbotts.com

**CONFIDENTIAL AND PROPRIETARY INFORMATION
OF CISCO TECHNOLOGY, INC.**

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO. Z 434 825 627

Mr. Michael H. Capon
16601 FM 1325 #636
Austin, Texas 78728

Re: *Method and Apparatus for Providing Variable Attenuation to Data Signals in an
XDSL Frequency Range Patent Application; (DSL 2372);*
Our File No. 062891.0439

Dear Mr. Capon:

Enclosed is a copy of the above-identified application for patent. The application should now be ready for execution and filing in the United States Patent and Trademark Office (PTO).

Please carefully review the application. If it accurately and adequately describes the invention, please execute the enclosed "Declaration and Power of Attorney" and "Assignment" documents, signing your name exactly as it is typewritten in **blue ink** and dating each document (note that the Assignment document should be dated twice).

We have forwarded a duplicate of the application, the Declaration and Power of Attorney and the Assignment documents to inventor Robert A. Marshall under separate cover.

Please note that the inventors and every other individual who is substantively involved in the filing and prosecution of a patent application owe a duty of candor to the PTO. The duty requires that these individuals disclose to the PTO all information known to any of them to be material to the patentability of the invention as it is defined by each of the claims of the application. Material information may include: (1) written materials, such as patents, technical articles, or product brochures which predate the filing of the patent application; (2) information concerning public disclosure, public use which predates the filing of the present application; (3) information disclosed to third parties without confidentiality restrictions on its disclosure, which predate the filing of the present application; and (4) information concerning a sale or offer for

sale of methods or apparatus related to your invention, which predates the filing of the present application.

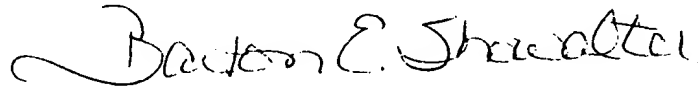
If you are aware of any such information which has not already been brought to my attention, please notify me as soon as possible. Failure to disclose such information may invalidate any patent issuing on the application. Accordingly, if you question whether certain information is material, please forward it to us and we will determine specific disclosure requirements. The duty to disclose all known or subsequently discovered information remains in force until a patent is granted on the application. Please provide us with whatever information you collect as soon as possible.

After you have executed the enclosed documents, please return the application to me, along with the Declaration and Power of Attorney, and the Assignment in the return Federal Express envelope. We will then file the application in the PTO as soon as possible.

If you have any questions concerning this matter, please do not hesitate to call me.

Very truly yours,

BAKER BOTTS L.L.P.



Barton E. Showalter



BES:du

Enclosures

cc: Paula Heyman, Esq. (without enclosures)

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Mr. Michael H. Capon
16601 FM 1325 #636
Austin, TX 78728

2. Article Number (Copy from service label)

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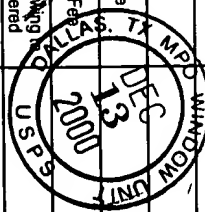
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Postage	\$
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Restricted Delivery Fee	
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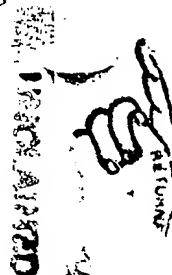
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